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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	ESCROW LICENSE NO.: 963-0038
)	
THE COMMISSIONER OF BUSINESS)	ACCUSATION TO ISSUE ORDERS:
OVERSIGHT,)	(1) SUSPENDING ESCROW AGENT'S
)	LICENSE PURSUANT TO FINANCIAL
Complainant,)	CODE SECTION 17608; and
)	
v.)	(2) IMPOSING PENALTIES PURSUANT
)	TO FINANCIAL CODE SECTION 17408
BUILDERS DISBURSEMENTS, INC.,)	
)	
Respondent.)	
)	
)	

The Complainant, the Commissioner of Business Oversight (Commissioner) of the Department of Business Oversight (Department), is informed and believes, and based upon such information and belief, alleges and charges Builders Disbursements, Inc. (BDI) as follows:

I.
Introduction

1. BDI is a joint control agent licensed by the Commissioner pursuant to Section 17005.1 of the Escrow Law of the State of California, commencing at Fin. Code § 17000 *et seq.* (Escrow Law).

2. BDI's principal place of business is located at 601 East Glenoaks Boulevard, Suite 101, Glendale, California 91207.

II.

Failure to File Annual Audit Report in Violation of Financial Code Section 17406

3. Financial Code section 17406, subdivision (a) requires all licensees under the Escrow Law to file an annual audit report containing audited financial statements within 105 days after the close of the calendar or the licensee's fiscal year, as applicable.

4. On or around November 16, 2017, the Department notified BDI that its December 31, 2017 annual audit report (annual audit report) must be received by the Department no later than April 16, 2018, which is 105 days after the close of the fiscal year end, and that failure to file the annual audit report by the deadline would subject BDI to penalties pursuant to Financial Code section 17408.

5. BDI failed to file its annual audit report by the deadline of April 16, 2018.

6. On or around April 24, 2018, the Department issued a 10 day-demand notifying BDI that its annual audit report was not received and that if the Department does not receive it within 10 days from April 24, 2018, then pursuant to Financial Code section 17408, subdivision (b), BDI will be assessed a penalty for \$100.00 per day for the first five days the annual audit report is overdue, and thereafter, \$500.00 per day for each day the annual audit report is overdue until it is received as required pursuant to Financial Code section 17406. BDI was further notified that failure to file the annual audit report may result in suspension or revocation of its escrow agent's license pursuant to Financial Code section 17602.5.

7. BDI failed to file its annual audit report by the 10 day-deadline of May 4, 2018.

8. On or around May 7, 2018, BDI's Chief Financial Officer verbally stated that BDI would file its annual audit report the following week, on or around May 14, 2018.

9. Receiving no response from BDI, on or around June 12, 2018, the Department made a further request to BDI for its annual audit report.

10. To date, BDI has not filed its annual audit report.

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III.**Failure to File Special Report in Violation of Financial Code Section 17406**

11. Financial Code section 17406, subdivision (e) requires all licensees under the Escrow Law to make other special reports as the Commissioner may require.

12. On or around July 28, 2017, the Department demanded that BDI provide within 30 days its financial statements for June 30, 2017, including the general account bank statement and reconciliation, to determine BDI's compliance with Financial Code section 17210, which provides that an escrow agent licensed on or after January 1, 1986 shall maintain at all times a tangible net worth of \$50,000.00, including liquid assets of at least \$25,000.00 in excess of current liabilities. BDI failed to respond by the deadline of on or around August 28, 2017.

13. On or around February 13, 2018, the Department issued a formal demand to BDI for its financial statements for the periods ending on June 30, 2017, August 31, 2017, and January 31, 2018, within 10 days, or by no later than February 23, 2018, and that failure to provide the required financial statements could result in the suspension of BDI's joint control license.

14. On or around February 13, 2018, BDI responded partially to the Department's formal demand by providing its financial statements for the period ending on June 30, 2017, but failing to submit its financial statements for the periods ending on August 31, 2017 and January 31, 2018.

15. On or around March 29, 2018, the Department issued a 10 day-demand for the required August 31, 2017 and January 31, 2018 financial statements, notifying BDI that pursuant to Financial Code section 17408, subdivision (b), it will be assessed a penalty of \$100.00 per day for the first five days the reports are overdue, and thereafter, \$500.00 per day for each day the reports are overdue.

16. On or around April 11, 2018, the Department extended the deadline for BDI to provide its financial statements, including the general account bank statement and reconciliation, for the periods ending on August 31, 2017 and January 31, 2018, to no later than April 25, 2018.

17. To date, BDI has failed to submit its financial statements, including the general account bank statement and reconciliation, for the periods ending on August 31, 2017 and January

31, 2018, in violation of Financial Code section 17406, subdivision (e).

**IV.
Applicable Law**

18. Financial Code section 17406 provides in relevant part:

(a) Each licensee shall submit to the commissioner, at the licensee's own expense, an audit report containing audited financial statements covering the calendar year or, if the licensee has an established fiscal year, then for that fiscal year, within 105 days after the close of the calendar or fiscal year, as applicable. At that time, each licensee shall also file additional relevant information as the commissioner may require.

(b) Within 30 days after receipt of a request from the commissioner, a licensee or other person subject to this division shall submit to the commissioner, at the person's own expense, an audit report containing audited financial statements covering the 12 calendar months next preceding the month of receipt of the request, or for another period as the commissioner may require. Unless the public interest shall otherwise require, the commissioner shall exempt a licensee from the provisions of subdivision (a) in whole or in part if the licensee has complied with a request pursuant to this subdivision as of a date within the calendar or fiscal year for which the exemption is granted.

...

(d) The reports and financial statements referred to in subdivisions (a) and (b) shall include at least a balance sheet and a statement of income for the year ended on the balance sheet date together with other relevant information as the commissioner may require. The reports and financial statements referred to in subdivisions (a), (b), and (c) shall be prepared in accordance with generally accepted accounting principles, and shall be accompanied by a report, certificate, or opinion of, an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards and the rules of the commissioner.

(e) A licensee shall make other special reports to the commissioner as the commissioner may from time to time require

19. Financial Code section 17602.5 provides:

If any licensed escrow agent fails to make any reports required by law or by the commissioner within ten (10) days from the day designated for the making of the reports, or within any extension of time granted by the commissioner, or fails to include therein any matter required by law or by the commissioner, such failure shall constitute grounds for the suspension or revocation of the license held by such escrow agent.

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20. Financial Code section 17005.6 provides, “Except as provided for in Section 17004, ‘escrow agent’ as used in this division includes joint control agents and Internet escrow agents.”
21. Financial Code section 17004 provides, “ ‘Escrow agent’ means any person engaged in the business of receiving escrows for deposit or delivery.”
22. Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that: . . .

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.
23. Financial Code section 17408 provides:

(a) If any person subject to this division fails to make any report required by law or by the commissioner, the commissioner may immediately cause the books, records, papers, and affairs of said person to be thoroughly examined.

(b) The commissioner may impose, by order, a penalty on any person who fails, within the time specified in any written demand of the commissioner, (1) to make and file with the commissioner any report required by law or requested by the commissioner, or (2) to furnish any material information required by the commissioner to be included in the report. The amount of the penalty may not exceed one hundred dollars (\$100) for each day for the first five days the report or information is overdue, and thereafter may not exceed five hundred dollars (\$500) for each day the report or information is overdue.

(c) If, after an order has been made under subdivision (b), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted under that chapter.

(d) If the person fails to file a written request for a hearing within 30 days of the date of service of the order, the order imposing the penalty shall be

1 deemed a final order of the commissioner, and the penalty shall be paid
2 within five business days.

3 (e) If a hearing is requested, the penalty shall be paid within five business
4 days after the effective date of any decision in the case ordering payment
to be made.

5 **V.**
6 **Prayer for Relief**

7 24. The Commissioner finds that, by reason of the foregoing, BDI violated Financial
8 Code section 17406 of the Escrow Law. Therefore, grounds exist to: (1) suspend the joint control
9 agent's license of BDI pursuant to Financial Code section 17608, and (2) impose penalties against
10 BDI pursuant to Financial Code section 17408, subdivision (b).

11 WHEREFORE, IT IS PRAYED that:

12 The joint control agent's license of BDI be suspended, pursuant to Financial Code section
13 17608, for the *greater* period of: (1) 6 months; or (2) until BDI has submitted the following: (i) its
14 2017 annual audit report that was due on April 16, 2018; (ii) financial statements, including the
15 general account bank statement and reconciliation, for the periods ending on August 31, 2017 and
16 January 31, 2018; and (iii) financial statements, including the general account bank statement and
17 reconciliation, for the last four quarters immediately preceding the date of submission, including
18 but not limited to March, June, September, and December 2018;

19 Pursuant to Financial Code section 17408, subdivision (b), a penalty be imposed against
20 BDI for failing to file the following reports within the time specified in written demand or by the
21 extended deadline granted by the Commissioner, in the amount of \$100.00 per day for the first five
22 days the report is overdue, and thereafter, \$500.00 per day for each day the report is overdue,
23 accruing until the date of payment by BDI, as follows: (1) for the 2017 annual audit report
24 demanded on or about April 24, 2018, a penalty accruing until the date of submission exceeding
25 221 days, of at least \$111,000.00, or according to proof; and (2) for BDI's financial statements,
26 including the general account bank statement and reconciliation, for the periods ending on August
27 31, 2017 and January 31, 2018, demanded by the extended deadline of on or about April 25, 2018, a
28 penalty accruing until the date of submission exceeding 220 days, of at least \$110,500.00, or
according to proof,

1 For a total amount of penalties of *at least* \$221,500.00, or according to proof.

2 Dated: January 15, 2019
3 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

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6 By _____
7 SOPHIA C. KIM
8 Senior Counsel
9 Enforcement Division
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